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December 30, 2010

Via ECFS

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington D.C., 20554

Re: Corrected Declaration of August Ankum and Olesya Denney – TracFone Petition for Declaratory Ruling on Universal Service Issues, WC Docket Nos. 09-197, 03-109

Dear Ms. Dortch:

Nexus Communications Inc. ("Nexus") filed comments in the above-referenced dockets on December 23, 2010. Attached to those comments was the "Declaration of August Ankum, Ph.D. and Olesya Denney, Ph.D." Unfortunately, during the conversion of that document from its native format to PDF format in preparation for electronic filing, certain portions of the text were dropped. Another party in the proceeding noticed this problem and brought it to our attention yesterday (December 29, 2010).

Attached to this cover letter is a corrected version of the declaration that includes all of the original text. It contains the legend "[Corrected Version 12/30/2010]" as a footer on each page to distinguish it from the (erroneous) original. Please refer to this corrected version as the accurate document in this proceeding.

I am serving a copy of this letter on all parties to the proceeding via electronic mail.

Please do not hesitate to contact me if you have any questions about this filing.

Sincerely,

Davis Wright Tremaine LLP

Christopher W. Savage

Before the

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

In the Matter of		
	)	
TracFone Wireless, Inc.	)	WC Docket Nos. 09-197, 03-109
Petition for Declaratory Ruling	)	

DECLARATION OF

AUGUST H. ANKUM, PH.D. AND OLESYA DENNEY, PH.D.

QSI consulting, inc.

December 23, 2010

[Corrected Version 12/30/2010]

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Exhibits

DECLARATION OF

AUGUST H. ANKUM, PH.D. AND OLESYA DENNEY, PH.D

We, August Ankum, Ph.D., and Olesya Denney, Ph.D. state and depose as follows:

I. INTRODUCTION

A. Qualifications

1. My name is August H. Ankum, and my business address is 150 Cambridge Street, Suite A603, Cambridge, Massachusetts, 02141. I currently serve as Senior Vice President with QSI Consulting, Inc. ("QSI"). My curriculum vitae is found in Exhibit 1, attached hereto.

2. My name is Olesya Denney, and my business address is 2230 Brandon Pl., West Linn, Oregon, 97068. I currently serve as a Senior Consultant with QSI. My curriculum vitae is found in Exhibit 2, attached hereto.

3. QSI is a consulting firm specializing in regulated industries, economic analyses and computer-aided modeling. QSI provides consulting services to regulated utilities, competitive providers, government agencies (including public utility commissions) and other industry organizations. A more detailed description of QSI and its clients may be found at *www.qsiconsulting.com*.

B. Purpose and Conclusions

4. This Declaration was prepared on behalf of Nexus Communications, Inc. Its purpose is to respond to issues raised in the TracFone Petition for Declaratory Ruling, dated December 1, 2010 ("TracFone Petition"), in which TracFone requests that the Commission adopt TracFone's

interpretations and modifications of certain rules regarding the federal Low-income support program.

5. In its petition, TracFone puts forth three general arguments: (1) an eligible telecommunications carrier ("ETC") providing Link Up benefits may not receive reimbursement from the Federal universal service fund ("USF") if it waives, at its own expense, the portion of its customary charge for commencing service not covered by the Link Up program; (2) a wireline ETC may not provide wireless Lifeline services as an ETC without being separately designated as a wireless ETC; and, (3) to qualify for ETC status to provide wireless-based Lifeline services in its service area in a state, and ETC must be in part, using its own wireless-based facilities.

6. We will address each of these arguments and demonstrate that the TracFone Petition is, in effect, asking the Commission to create additional entry barriers for companies that are willing to offer prepaid wireless service to low-income consumers, reducing rather than increasing consumers' access to affordable telecommunications and information services. As such, the TracFone Petition is inconsistent with universal service objectives and harmful to the interests of low-income consumers, the very welfare of whom the Lifeline and Link Up programs are intended to promote. In view of this, we recommend that the TracFone Petition be denied.

C. Overview of Universal Service Policy Objectives

7. According to the FCC, the general objective of universal service programs, as mandated by the Telecommunications Act of 1996, are to:[1]

- Promote the availability of quality services at just, reasonable and affordable rates for all consumers

[1] See http://www.fcc.gov/wcb/tapd/universal_service/

- Increase nationwide access to advanced telecommunications services
- Advance the availability of such services to all consumers, including those in low-income, rural, insular, and high cost areas at rates that are reasonably comparable to those charged in urban areas
- Increase access to telecommunications and advanced services in schools, libraries and rural health care facilities
- Provide equitable and non-discriminatory contributions from all providers of telecommunications services to the fund supporting universal service programs

8. In pursuit of these policy objectives, the FCC established four programs: the High-Cost program; the Low Income program; the Schools and Libraries program, commonly referred to as E-rate; and, the Rural Health Care program. Of specific interest to the instant proceeding is the Low Income program, which is comprised of the Lifeline and Link Up programs, the purpose of which may be described as follows:[2]

> The Low Income Program of the Universal Service Fund, which is administered by the Universal Service Administrative Company (USAC), is designed to ensure that quality telecommunications services are available to low-income customers at just, reasonable, and affordable rates. Similar programs have existed since at least 1985. The Telecommunications Act of 1996 reiterated their importance by including the principle that "consumers in all regions of the nation, including *low income consumers* . . . *should have access to telecommunications and information services* . . ." (Emphasis added.)

9. It is against this mandate – "that low-income consumers … should have access to telecommunications and information services" – that the Commission should evaluate the TracFone Petition and determine whether its policy recommendations are more likely to harm than help low-income consumers.

10. Given the state of the economy and high unemployment rates, the Lifeline and Link Up programs are increasingly important, not just as a matter of achieving and preserving a degree of fairness and equality, essential to well-functioning democracies, but also as critical components

[2] See http://www.universalservice.org/li/about/default.aspx

of economic policies, aimed at helping unemployed workers to find jobs. In this regard, the importance of access to affordable telecommunications and information services cannot be overstated. To be sure, the ability to contact and be contacted by prospective employers critically affects an unemployed worker's chances of finding employment.

11. As is well recognized, prepaid wireless services have properties that uniquely meet the needs of low-income and unemployed/under-employed populations. First, as a wireless service, it serves these populations well in that it does not restrict them to a specific location, house, or apartment to make and receive calls, and which they may not be able to maintain in any event due to adverse economic circumstances. Further, prepaid wireless services generally tend to have lower upfront costs; i.e., the barriers-to-service tend to be low and lower than those of other telecommunications and information services. Importantly, the "prepaid" nature of the service allows low-income consumers to better manage their bills (telecommunications expenditures) commensurate with changing income streams. Specifically, because the bulk of a customer's expenses are associated with the purchase of prepaid minutes, customers can control and/or lower their monthly bills as needed by carefully monitoring and moderating their usage. No other service allows low-income consumers such critical bill management. Indeed, pre-paid services are likely to be a very effective method of providing "toll limitation," which is very important given that failure to pay long-distance bills is a typical reason for subscriber's loss of access to telecommunications service.

12. For these reasons, among others, the Commission should reject policies that fail to promote access by low-income consumers to prepaid wireless services.

II. LOW INCOME PROGRAMS (LIFELINE AND LINK UP) AND PREPAID SERVICE PROVIDERS

13. The federal Low Income program is designed to increase the availability of the supported telecommunications services[3] to low-income subscribers. It is available to qualifying low-income residential consumers and consists of two sub-parts: Lifeline and Link Up. The Lifeline program provides a credit to monthly recurring rates for supported services.[4] The Link Up program provides a credit to the non-recurring installation and service charges.[5] Customers eligible under Link Up are also eligible for monthly recurring assistance under the Lifeline program.[6]

14. The Low Income Program reimburses ETCs for the revenues they forgo by providing Lifeline and Link Up Services to low-income subscribers.[7] In addition, Lifeline support, for providing toll limitation service, reimburses ETCs for their incremental cost of providing this service.[8]

15. A state commission (and in certain instances, the FCC) designates carriers as ETCs based on a number of criteria, including that the carrier offer supported services by using either its own facilities or a combination of its own facilities and resale of another carrier's services and

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3 The nine supported services include voice grade access to the public switched network, local usage, dual tone multi-frequency signaling or its functional equivalent, single-party service or its functional equivalent, access to emergency services, access to operator services, access to interexchange service, access to directory assistance, and toll limitation for qualifying low-income consumers (see 47 CFR §54.101).
4 See 47 CFR §§54.401, 403, 405, 407, 409 and 410.
5 See 47 CFR §§54.411, 413, 415, and 416.
6 See 47 CFR §§54.415.
7 See 47 CFR §§54.407 and 413.
8 See 47 CFR §§54.403.

facilities.[9] The rules spell out that a state commission shall designate a common carrier that meets the ETC requirements irrespective of the technology used by such carrier. [10]

16. The Low Income program's costs constitute a relatively small portion of the federal USF's overall costs. For example, in 2009[11] Low Income support payments constituted approximately 14% of total federal universal service support disbursements.[12]

17. Unfortunately, Low Income program participation rates remain relatively low. Based on the USAC 2009 Low Income participation study,[13] the program supported approximately 8.2 million subscribers, while the total number of eligible households was 25.6 million. In other words, the Low Income program reaches only a minority (32% percent[14]) of eligible low-income households, while the remaining 17.4 million low-income households are not taking advantage of the available subsidy. This statistic should inform the Commission's evaluation of the TracFone Petition, and more generally, the growth in the Low Income fund size.

18. While the number of subscribers that took advantage of the Low Income program in 2009 (8.2 million) was low when compared to the target (25.6 million eligible households), this number was a significant improvement over participation rates in previous years, which were flat at around 7 million subscribers in the preceding five years.[15] *The increase is attributed largely*

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9 See 47 CFR § 54.201.

10 See 47 CFR § 54.201 (h).

11 The last year for which full year data are available.

12 Calculated from the USAC Annual Report for 2009, p. 39 as a ratio of Low Income disbursements ($1,025,194) and total USF disbursements ($7,256,367).

13 See p. 9 of presentation "Discounted Telephone Service for Low Income Consumers" by Pamela Gallant, Director, Low Income Program Universal Service Administrative Company at National Energy and Utility Affordability Conference June 16, 2010 San Antonio, TX available at http://www.energyandutilityconference.org/Assets/2010%20Conference/2010%20Presentations/7D_Gallant.pdf

14 Calculated as 8.2 million divided by 25.6 million.

15 See the USAC Annual Report for 2009, p. 9 and the FCC Report Trends in Telephone Service dated September 2010 (2010 Trends Report"), Table 19.8 column for total Lifeline beneficiaries.

to the growth of prepaid mobile wireless service.[16] As discussed, prepaid wireless service is uniquely suited to meet the demands of low-income consumers: they need not enter into contracts, have an acceptable credit history, pay a security deposit or experience unpleasant billing surprises. Prepaid service arrangements allow low-income consumers to obtain wireless services as needed and at a level of service and expense they can afford.

19. While for large carriers, such as AT&T, prepaid market and low-income customers are a relatively small segment of the telecommunications market,[17] some companies, such as TracFone and Nexus, focus almost exclusively on the low-income segment. These companies developed product offerings specifically tailored to serve this segment.

20. In contrast, service plans of wireline incumbent local exchange carriers ("ILECs") – often the only other alternative for low-income customers[18] – do not offer the same level of service affordability. More specifically, based on FCC data for urban areas, wireline residential rates for flat-rated service are on average $25.62 per month (with SLC and taxes)[19] and range from $16.7 to $38.60 per month, depending on the city.[20] In other words, even in the presence of the federal Lifeline subsidy, low-income customer of wireline service would have to contribute (absent

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16 GAO October 2010 Report. Telecommunication. Improved Management Can Enhance FCC Decision Making for the Universal Service Fund Low-Income Program ("GAO Report"), p. 1.

17 See for example, the FCC 14th Report on Wireless Competition in docket WT Docket No. 09-66 released May 20, 2010, p. 223, Note 1 reporting that in 2008 AT&T had 60,098,000 postpaid and 16,911,000 prepaid wireless customers and noting in ¶ 98 that prepaid service typically has lower Average Revenue per Unit and higher churn rates than postpaid service.

18 It is telling that Table 19.12 of the 2010 Trends Report, which summarizes USF disbursements by a type of service provider labeled low income disbursements for competitive ETCs ("CETCs") as "wireless providers." Note 2 to this table says as follows: "All CETC disbursement from Low-Income are assigned to wireless providers."

19 See the FCC 2008 Reference Book of Rates, Price Indices, and Household Expenditures for Telephone Service, Table 1.1.

20 See the FCC 2008 Reference Book of Rates, Price Indices, and Household Expenditures for Telephone Service, Table 1.3.

other subsidy sources) on average $12 to $15 per month[21] towards local telephone service. Therefore, from a pure cost perspective, low-income consumers often prefer prepaid wireless plans over wireline plans. In addition, just like the rest of the consumers who increasingly rely on wireless communications,[22] low-income customer value the advantages and flexibility offered by wireless services.

21. It is not surprising that the number of low-income customers who prefer wireless communications over wireline is increasing. For example, based on a 2009 USAC map depicting ETCs with most low-income subscribers per state,[23] TracFone (a wireless provider) had most low-income subscribers in eleven states[24] – meaning that TracFone serves more low-income customers than the incumbent wireline providers.

22. A number of other carriers have recognized that the low-income market segment is a business opportunity, rather than a regulatory burden, and the last three years saw a significant increase in new entrants focusing on this demographic. This increase in the number of providers benefits low-income consumers in a number of ways. As in any market, providers compete for end-users by offering better valued deals and varying options. For example, in a recent Ex Parte presentation,[25] TracFone noted that, while TracFone's original plan contained 68 minutes, a new

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21 Calculated as a rounded difference between the average rate of $25.62 and the approximate amount of subsidy ($10 to $13.60).

22 According to Table 7.4 of the 2010 Trends Report, 24.5% of total US households are "wireless-only" households, while only 14.9% are "wireline-only" households. According to more recent (preliminary) estimates of the Center for Disease Control and Prevention, in the first half of 2010 26.6% households were wireless-only households, while only 12.9% were wireline-only households. (See Table 1 in S. J. Blumberg and J. V. Luke, *Wireless substitution: Early Release of Estimates from the National Health Interview Survey*, January–June 2010. National Center for Health Statistics. December 2010, available from http://www.cdc.gov/nchs/nhis.htm).

23 2009 data. The map is available at http://www.universalservice.org/_res/documents/li/pdf/lifeline-subscribers-etc-2009.pdf.

24 Alabama, Georgia, Florida, Maryland, Massachusetts, Michigan, New Hampshire, North Carolina, Tennessee, Virginia and West Virginia.

25 TracFone's December 7, 2010 Ex Parte Presentation in WC Docket Nos. 09-197, 03-109 ("TracFone Ex Parte Presentation").

competitor started offering 200 minutes for the same dollar price of the prepaid plan. TracFone responded by offering even more minutes (250 minutes), and at least one competitor matched the 250-minute plan. In addition, providers compete by increasing the outreach to potential customers. For example, the recent Joint Board's Recommended Decision[26] took note of Nexus's pro-active outreach efforts, which go beyond standard advertising and include *the deployment of mobile information centers directly to neighborhoods with high concentrations of qualifying consumers*.

23. Today, the overarching goal of the Low Income program should be to increase participation of potential low-income customers, which remains at unacceptably low levels. As recent industry developments show, prepaid wireless providers are best situated to achieve this goal. Therefore, an increase in the number of carriers that offer prepaid wireless products to low-income customers will only benefit consumers. Given that the TracFone Petition requests that the Commission erect barriers-to-entry, the TracFone petition is not in the public interest.

III. SPECIFIC ISSUES RAISED IN THE TRACFONE PETITION

A. Part I: Similarly Situated Carriers

24. On page 2 of its petition, TracFone raises an issue involving the concept of "similarly situated carriers." TracFone notes that it receives universal service funding as a result of the Commission's decision to forbear from applying the statutory "facilities" requirement (as discussed below), but that this forbearance was limited to Lifeline (a credit to recurring monthly charges). TracFone concludes that "similarly situated carriers" should be subject to the same

[26] In the Matter of Federal-State Joint Board on Universal Service Lifeline and LinkUp, CC Docket No. 96-45, WC Docket No. 03-109, *Recommended Decision* at ¶ 64 released November 4, 2010.

limitations.[27] TracFone's apparent logic is that because TracFone is not authorized to receive Link Up support (a credit to the non-recurring service initiation charges), "similarly situated carriers" should not be able to receive Link Up support either. We disagree with this logic.

25. A review of the TracFone forbearance case[28] suggests that the grant of forbearance was limited to Lifeline service because TracFone's application was expressly *limited to Lifeline* service.[29] Specifically, in the TracFone forbearance case, TracFone stated the following:

> TracFone does not plan to offer LinkUp services to customers because such services are unnecessary. LinkUp support reimburses local service providers for providing discounted home telephone service connections. TracFone does not charge customers for service connections, and therefore, there is no need to offer LinkUp services supported by the Universal Service Fund.[30]

In other words, because TracFone has apparently from the beginning chosen to structure its pricing plans so as not to charge customers for service connections (which is the charge subsidized by the Link Up support mechanism), *TracFone did not seek forbearance to receive Link Up support*.

26. It is our understanding that the Commission has denied Link Up funding to all subsequent Forbearance applicants that requested Link Up support. However, it is also our understanding that the denial was on the grounds that the petitioners had not met their burden of proof and not as a general finding that, as a matter of principle, prepaid wireless resellers should not qualify to receive Link Up support. For example, in a recent order addressing a forbearance petition of a wireless reseller, the Commission said that the petitioning reseller:

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27 TracFone Petition, p. 2.

28 Docket CC No. 96-45, *In the Matter of Federal-State Joint Board on Universal Service, Petition of TracFone Wireless, Inc. for Forbearance from 47 U.S.C. 214(e)(l)(A) and 47 C.F.R. § 54.201(i).* TracFone filed its forbearance petition on June 8, 2004, and the Commission adopted an order conditionally granting the petition on September 6, 2005 (" TracFone Forbearance Order").

29 TracFone Forbearance Order ¶ 2.

30 Docket CC No. 96-45, *In the Matter of Federal-State Joint Board on Universal Service, Petition of TracFone Wireless, Inc. for Forbearance from 47 U.S.C. 214(e)(l)(A) and 47 C.F.R. § 54.201(i),* TracFone Reply Comments dated October 4, 2004, p. 4.

> has not shown, taking into account the differences between the Lifeline and Link Up programs, why it needs forbearance from the facilities requirement for Link Up specifically nor why the public interest would be served by such forbearance. General references to the statutory goal of ensuring that low-income consumers have access to telecommunications services do not suffice to replace a particularized argument necessary to justify forbearance from statutory requirements. We thus find that [the petitioning reseller] has failed to meet its burden to show that forbearing from the facilities requirement in the context of the Link Up program is in the public interest, and we deny its request.[31]

27. TracFone's regulatory filings in various jurisdictions also suggest that TracFone itself does not appear to have principled objections to associating its own name with Link Up services. Specifically, in a number of its early state ETC applications,[32] TracFone claimed that it offered Link Up services. For example, its Texas ETC case, TracFone stated that it "seeks ETC designation solely to provide Lifeline *and Link Up* service to qualifying Texas consumers"[33] and explained why the wireless-resale model does not create a risk of increasing the size of the federal USF because of both Lifeline and Link Up funding. TracFone's reasoning was as follows:

> Furthermore, it is important to recognize the differences between low income funding for the Lifeline *and Link Up* programs and high cost funding. With Lifeline *and Link Up*, ETCs only receive USF support for customers they obtain. If TracFone acquires Lifeline customers currently served by other ETCs, TracFone will gain the Lifeline support for

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[31] WC Docket No. 09-197, CC Docket No. 96-45, *In the Matter of Telecommunications Carriers Eligible for Universal Service Support Federal-State Joint Board on Universal Service; Conexions Petition for Forbearance*, Order released October 1, 2010, ¶ 21 (footnotes omitted). Similar reasoning for denial is contained in the orders on forbearance petitions of Midwestern Telecommunications Inc. (WC Docket No. 09-197, CC Docket No. 96-45, *In the Matter of Telecommunications Carriers Eligible for Universal Service Support; Federal-State Joint Board on Universal Service; Head Start Petition for Forbearance; Consumer Cellular Petition for Forbearance; Midwestern Telecommunications Inc. Petition for Forbearance; Line Up, LLC Petition for Forbearance*, Order released July 30, 2010) and iwireless (CC Docket No. 96-45, WC Docket No. 09-197, *In the Matter of Federal-State Joint Board on Universal Service; Telecommunications Carriers Eligible for Universal Service Support; i-wireless, LLC Petition for Forbearance from 47 U.S.C. § 214(e)(1)(A)*, Order released June 25, 2010).

[32] Including Texas, California and Kentucky.

[33] Public Utility Commission of Texas Docket No. 36646, *In the Matter of Petition of TracFone Wireless, Inc. for Designation as an Eligible Telecommunications Carrier in the State of Texas for the Limited Purpose of Offering Lifeline and Link Up Service to Qualified Households*, Petition Of TracFone Wireless, Inc. For Designation As An Eligible Telecommunications Carrier In The State Of Texas For The Limited Purpose Of Offering Lifeline And Link Up Service To Qualified Households dated January 29, 2009 (" TracFone Texas Petition"), p. 1 (emphasis added).

> those customers, but the ETCs losing the customers will lose the support. TracFone will only increase the amount of USF Lifeline funding in situations where it obtains new Lifeline customers, *i.e.*, customers not currently enrolled in other ETCs' Lifeline programs. *TracFone will also gain Link Up funding* for each new customer. In contrast, with high cost support, when new ETCs enter the market and capture customers from the existing ETCs, both the incumbent ETCs and the new ETCs receive high cost support -- based on the incumbent LECs' costs, thereby increasing the size of the USF.[34]

TracFone's Texas Petition also explained that "under all Lifeline Link Up plans, 100 percent of federal and state required Lifeline and Link Up support will be provided to Lifeline and Link Up customers in the form of free usage."[35] Similarly, for broadband services, TracFone proposed a "trial broadband Link Up" program that would be available to both wireline and wireless providers.[36] Presumably, TracFone proposed this program with the hope of receiving support under the proposed mechanism.

28. The above discussion demonstrates that even though TracFone chose not to seek Link Up support in its original forbearance petition, there are no principled reasons why Link Up support should not be provided to other "similarly situated carriers." [37] TracFone does not appear to lack Link Up support due to its "situation." It lacks Link Up support as a result of its own specific business and regulatory decisions.

29. Further, the term "similarly situated carriers" is not clearly or properly defined in the TracFone Petition. From the context in which TracFone invokes the Nexus example it is clear that TracFone uses this term with an inappropriately broad meaning. Specifically, TracFone equates its own status (a pure wireless reseller that charges no customer connection fees and

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34 TracFone Texas Petition, p. 25 (emphasis added).

35 TracFone Texas Petition, p. 23 footnote 35. TraFone's Texas petition also notes that free handsets are also covered under Link Up. There is no consensus among wireless providers on this issue, and Nexus, for example, does not recover costs of the handsets through Link Up.

36 *In the Matter of Lifeline and Link Up Federal-State Joint Board on Universal Service WC Docket No. 03-109 CC Docket No. 96-45*, Petition To Establish A Trial Broadband Lifeline Link Up Program filed by TracFone on October 9, 2008 ("TracFone Broadband Lifeline Link Up Petition"), p. 1.

37 TracFone Petition, p. 2.

needed forbearance to be able to receive USF support) with the status of Nexus (a wireline and wireless provider that historically has charged a connection fee and relies in part on its own facilities to provide the supported services). The two carriers cannot be considered “similarly situated” with regard either to their regulatory status or their pricing strategy in the market. We discuss the issue of the differences in status in more detail below, when addressing Parts II and III of the TracFone Petition (the proposal of separate “wireless ETC” and the proposed “clarification” on the “facilities” requirement).

B. Part I: Customary Charges

30. Pages 3 and 4 of the TracFone Petition cite rule 47 CFR §54.411(a). This rule describes the “assistance program for qualifying low-income consumers, which an eligible telecommunications carrier shall offer as part of its obligation set forth in §§54.101(a)(9) and 54.101(b)” (an obligation to offer supported services). This assistance program includes a reduction in the carrier's *customary charge* for commencing telecommunications service (which shall be half of the customary charge or $30.00, whichever is less) and a deferred schedule for payment of the charges assessed for commencing service. ETCs’ re-imbursements for offering the Link Up service are addressed in a different rule, rule 47 CFR §54.413. This rule says that ETCs’ re-imbursements should be for “revenue they forgo in reducing their customary charge for commencing telecommunications service and for providing a deferred schedule for payment of the charges assessed for commencing service for which the consumer does not pay interest, in conformity with §54.411.”

31. While we are not attorneys, a plain English reading of these two rules does not (as suggested by TracFone) appear to prohibit carriers from providing additional discounts for low-income customers beyond the $30 maximum reimbursement provided by the USF. Instead, it

only limits the USF re-imbursements to certain amounts. Again, keeping in mind the objective of Low Income Programs – to make telecommunications and information services accessible to low-income consumers – it is difficult to see how arguments such as TracFone's intent on *limiting* the discounts available to qualified consumers, are in the public interest. Clearly, other things being equal, the greater are discounts offered by a carrier, the more affordable are its services to low-income consumers.

32. Further, TracFone appears to attribute a meaning to the term "customary charges" that suits its purposes, ignoring that the term is far from unambiguous. Specifically, while the Low Income rules do not define "customary charges," TracFone asserts that the term means "usual" or "regular" or "routinely imposed" charges. But obviously there are other possible meanings. For example, the term "customary charges" is used in health insurance industry and defined in rule 42 C.F.R. § 405.503[38] as follows (emphasis added):

> The term "customary charges" will refer to the uniform amount which the individual physician or other person charges in the majority of cases for a specific medical procedure or service. In determining such uniform amount, *token charges for charity patients and substandard charges for welfare and other low income patients are to be excluded*.

33. The difference between TracFone's generic definition that customary charges are simply "usual" charges and a more refined definition as the one presented above is that discounts to low-income customers should not be taken into account when estimating customary charges. In the health care context, if doctors' reimbursable "customary charges" were deemed reduced as a result of providing "charity" care at little or no cost to the patient, the obvious result would be a strong disincentive for doctors to engage in this admirable practice. The same holds true for telephone service in the context of the charges of a small carrier that targets the low-income

[38] Title 42 - Public Health.

segment of the market (analogous to "charity patients"): just because an ETC discounts a charge for the majority of its customers (low-income customers) does not mean that the ETC does not have relevant customary charges to be discounted.

34. On pages 4 through 9, the TracFone Petition proceeds to analyze Nexus' specific product offerings to observe that for low-income customers, Nexus defers (and in a minority of states, waives) the remaining balance of service connection charges (charges in excess of the Link Up amounts required by §54.411). As discussed in the previous paragraph, this observation does not mean that Nexus imposes only a "nominal"[39] service connection charge; it simply provides discounts to low-income customers.

35. On page 5, the TracFone Petition observes that Nexus waives the remaining balance of service connection charges (charges in excess of the Link Up amounts) in four states.[40] However, *waiving the remaining balance of service connection charges is an industry-wide practice* that is followed by many large wireless and wireline carriers. For example, AT&T Wireless offers Lifeline and Link Up service in fourteen states.[41] In *each* of these states, AT&T Wireless waives the portion of the service connection charge that is not covered by Link Up.[42] Yet, in all but one of these states AT&T Wireless received a Link Up subsidy in the most recent quarter.[43] Similarly, a wireline ILEC, AT&T-Georgia, waives the balance of the non-recurring charges for connection of service not covered by Link Up subsidy, and this practice dates back to

[39] TracFone Petition, p. 5.
[40] In Nexus's case, our understanding is that this was an additional benefit for low-income consumers negotiated by several state regulators as a condition of granting ETC status.
[41] See http://www.wireless.att.com/learn/articles-resources/community-support/lifeline-Link Up.jsp.
[42] See state-specific brochures in http://www.wireless.att.com/learn/articles-resources/community-support/lifeline-Link Up.jsp.
[43] Third quarter of 2010. Based on disbursement data contained in Appendix LI04 - Quarterly Low Income Support Disbursement Amounts by Company - 3Q2010 of the USAC FCC 1st Quarter 2011 Filing.

at least 2005.[44] Yet, AT&T-Georgia is a recipient of the Link Up subsidy.[45] Another Georgia carrier that waives the balance of service installation charges for Link Up customers is Cox Georgia (a cable-based wireline CLEC) – also a recipient of the Link Up support.[46] An example from another state is CenturyLink of Wisconsin (a mid-sized ILEC), which is also a recipient of the Link Up support that waives the full amount of service connection charges.[47] Note that the effective date of CenturyLink's Wisconsin tariff that describes this waiver is October 1, 2000, meaning that the company has been offering this waiver for over 10 years. Verizon Wireless is another company that waives the full amount of service activation fee for low-income customers in all states.[48] Many other examples could be provided to demonstrate that such waivers are a standard industry practice.

36. TracFone's suggestion on page 5 that when a carrier waives all or part of the remaining activation fee, a carrier should not receive Link Up support because the USF support ends up covering a portion of the activation charge, is puzzling, to say the least. It is the carrier that covers the remaining portion of the service activation charge, which the carrier does at its own expense and

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44 See BellSouth Telecommunications Inc. of Georgia *General Subscriber Service Tariff*, Section A4, p. 7 effective October 14, 2005: "A. The federal credit available for a Link Up connection is *thirty dollars (*$30.00*)* maximum or fifty percent (50%) of the installation and service charges from the Tariff, whichever is less. B. The Company will provide an additional credit of the remaining balance after the federal credit is applied. C. The total Link Up credit provided to eligible Link Up customers is one hundred percent (100%) of the applicable service and installation charges from this Tariff." Note that while the content of this tariff is deleted due to de-tariffing as of November 1, 2010, the same provision appears in BellSouth Telecommunications Inc. of Georgia current *General Exchange Guidebook*, Section A4, p. 7.

45 Based on disbursement data contained in Appendix LI04 - Quarterly Low Income Support Disbursement Amounts by Company - 3Q2010 of the USAC FCC 1st Quarter 2011 Filing.

46 See http://ww2.cox.com/wcm/en/residential/datasheet/middlegeorgia/cox-middlega-lifeline-form.pdf and disbursement data contained in Appendix LI04 - Quarterly Low Income Support Disbursement Amounts by Company - 3Q2010 of the USAC FCC 1st Quarter 2011 Filing.

47 See Tariff CenturyTel of the Midwest-Wisconsin, Inc. P.S.C. of WI. No. 1 (General Exchange), Sec. 7 p. 1: "The Link Up Program is available only to qualifying low-income residential customers with a single telephone line per household. Customers will receive a waiver of all applicable regulated service charges when initiating, moving or reconnecting essential Network Access Line Service. Federal, state, county and local taxes applicable to the waived charges will also be waived."

48 See http://www.verizonwireless.com/b2c/landingpages/lifeline.jsp: "Link Up assists qualified low-income customers by paying 50% of a customer's one-time activation fee, and Verizon Wireless will waive the remaining 50%."

to the benefit of consumers. TracFone's suggestion that such carrier should not receive the Link Up support creates policy consequences that contradict the very objective of Low Income support programs: to make telecommunications and information services *more* affordable to qualifying low-income consumers. TracFone's recommendations would surely make it *less* affordable.

37. The following table illustrates this effect. The table considers two scenarios – both involving a $70 service activation charge and a $30 Link Up discount to the end user. It calculates the net effect of having the current industry practice of waiving the balance of the charge, and TracFone's proposed system, in which the waiver is not permitted.

Item	Line / Formula	Scenario 1: Current Practice. Carrier Waives the Remaining Balance	Scenario 2: TracFone Proposal. To Receive USF, Carrier Cannot Waive the Remaining Balance
Connection Fee	L1	$70.00	$70.00
Link Up Discount to End User	L2	$30.00	$30.00
Carrier Discount to End User	L3	$40.00	$0.00
USF Subsidy to Carrier	L4	$30.00	$30.00
Net Cost to End User	L1-L2-L3	**$0.00**	**$40.00**
Net Revenue to Carrier	L1-L2-L3+L4	**$30.00**	**$70.00**

38. As shown in the above table, under the current practice (Scenario 1), in which a carrier waives a portion of the service activation fee (*at its own expense)*, the end user incurs zero net activation cost, and the carrier receives $30 in revenue towards compensation of its service activation costs. Under TracFone's proposal (Scenario 2), a carrier that receives the Link Up subsidy is not permitted to waive the remainder of the customer balance. Under this scenario, the end user's cost of acquiring service is $40, and the carrier's revenue associated with service activation for this customer is $70. In both cases the size of the Link Up funding is the same

($30). The main difference between these two scenarios is that an end-user is worse off, and the carrier is better off (with respect to any given customer) under the TracFone's proposal compared to the current system. While there are good reasons for charging a reasonable service activation fee (as discussed below), it obviously constitutes an additional monetary burden on potential customers. Given the purpose of the program to encourage low-income consumers to subscribe to telephone service, there are legitimate reasons for trying to minimize the impact of these fees on customers as well. But in all events, the table demonstrates that TracFone's argument that waiving the balance of the Service Activation Fee somehow constitutes fraud, waste and abuse could not be further from the truth. In fact, it is TracFone's position (that would discourage if not prevent carriers from offering additional voluntary discounts to low-income customers) that harms the public policy interest.

39. As discussed above, it is an established industry practice for carriers to waive the portion of the service connection charges, not covered by Link Up, for low-income consumers. TracFone's proposal to introduce a new interpretation of the rules would only mean that the low-income segment of the population is harmed. Also, this proposal would impose additional cost on many carriers, as they would have to change their billing systems.

40. As noted above, FCC rules permit an ETC to defer a consumer's payment of non-waived portions of service activation fees over the course of a year. On pages 6 through 8, the TracFone Petition discusses a Nexus product offering under which the remaining service connection charge balance (the balance not covered by Link Up) is covered with purchases of additional air time. The Petition incorrectly equates this product offering with a situation in which a customer does not have to pay the remaining balance. While it is unclear why anyone would object to this from a policy perspective (as it lowers the cost of telecommunications services to low-income

consumers), Nexus' practice of providing additional airtime in exchange for subscribers paying money towards the connection charge is in effect no different than if the originally pre-loaded offering had come with additional minutes – minutes conditional on payment of the balance. In a way, this pricing arrangement *is an incentive to the customer to pay the customary connection charge*. The Commission should note that because prepaid providers do not have a post-paid billing relationship with their customers, *prepaid provider cannot simply send a monthly bill to collect the remainder of the service activation fee the way other providers do.* That is, the structure of the prepaid wireless market does not permit a traditional approach to monthly fee collection and prepaid providers have little choice but to encourage customers to pay by providing additional incentives, such as additional airtime to the subscriber. It would be most ironic, and unfortunate, if the very characteristics of prepaid services that make it so ideally suited for low income and unemployed/under employed consumers – i.e., the fact that it does not require a fixed address, and there are no fixed monthly bills to pay – should form the basis for disqualifying prepaid providers from receiving Link Up to serve population that needs this service now more than ever.

41. Further, the fact that an ETC's pricing strategy may include a service connection charge (while TracFone's plans may not) actually contributes to overall efficiency. For example, by imposing a customary activation charge on the subscriber, Nexus, unlike other *totally* "free" prepaid wireless Lifeline providers, is actually imposing an out-of-pocket payment requirement for Lifeline service. This is good public policy that addresses concerns of some regulators. For example, NARUC has recently noted its concern that in the absence of such nominal payments, prepaid wireless Lifeline would be "free", with a possible concern that "[a]s costs approach zero

- demand approaches infinity."[49] Further, a connection charge reduces customer churn and excessive connections/disconnections, as follows.[50] In the absence of service connection charges, a customer does not have an incentive to stay with the same company. Additional customer churn increases the company cost because behind every service connection charge there is service connection *cost*, as explained in more detail below. Indeed, from the perspective of the market as a whole, high churn imposes higher costs on all firms in the market viewed as a group for delivering the same overall service to consumers. While consumers should of course be free to change carriers in response to changing perceptions of service quality or price, reasonable steps to cut down on churn should not be discouraged. Because an efficient pricing structure is the one in which costs are recovered in a manner they are incurred,[51] it makes economic sense to set a pricing structure that contains a combination of one-time and usage based cost.

42. Wireless providers, including prepaid providers, incur significant costs with every new customer service connection. They include costs associated with processing customer service orders, and in some cases, the direct assistance of customer service representatives, the setup of the subscriber's account, assigning and tracking of phone numbers, loading the initial minutes

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[49] See *In the Matter of Federal-State Joint Board on Universal Service; Lifeline and Link Up* CC Docket No. 96-45, NARUC *Ex Parte Notice* , November 18, 2010, page 2. We should note that we do not agree with the observation in that demand is limited due to certain restrictions, such as, consumers have to qualify for the service, and there is a finite number of low income consumers. It should also be noted that the target population of the Low Income program is still being underserved, and thus concerns about the demand being infinite are premature. At this point, the concern should be that too few low income consumers are benefitting from these services.

[50] Based on TracFone's data on the number of total and de-enrolled subscribers contained on p. 2 of its Ex Parte Presentation, TracFone experiences significant customer churn. This churn is expected given that TracFone does not charge service connection fees, so that a customer is indifferent between staying with one provider or switching to another provider. It is also likely that the absence of service connection fees contributed to non-responses of some of TracFone's customers during the Massachusetts verification audit (the audit discussed in the same Ex Parte Presentation). These non-responses have been incorrectly interpreted by critics of prepaid wireless Lifeline services as an indication that a large portion of TracFone's Lifeline customers did not pass eligibility verification requirements.

[51] See, for example, the rules on pricing unbundled network elements and interconnection, 47 CFR § 51.507 General Rate Structure Standard.

purchased by the customer into the newly set up account, activating the handset, configuring the network in order for the network to recognize a specific number as belonging to a specific customer, the cost associated with enrolling and vetting the potential subscriber against the various internal subscriber data bases to ensure the subscriber does not receive another Low Income subsidy, as well as the cost of customer acquisition. The last category is very important for small competitive providers that face an uphill battle against more established firms. These carriers' customer acquisition efforts include not only the traditional channels, such as media advertising, but also less standard and more proactive channels, such as deploying mobile information centers directly to neighborhoods with high concentrations of qualifying consumers. It is logical to assume that if ETCs are unable to attempt to recoup at least in part a portion of their initial costs associated with enrolling and provisioning wireless Lifeline subscribers via a connection charge, ETCs will be forced to redirect financial resources that otherwise would have been used to provide additional benefits to consumers, such as developing and deploying active outreach efforts to let consumers know about the existence and availability of Lifeline and Link-Up.

C. Part II: Wireless ETC

43. On pages 9 through 12, the TracFone Petition is proposing a concept of separate wireless and wireline ETC designations. TracFone's main point is contained on page 10, where it says "[i]n order for a wireline ETC to expand its USF-supported service in a state to include wireless service, it must ensure that it has approval from the appropriate designating authority prior to offering wireless USF-supported service in that state." TracFone again illustrates its point with the example of Nexus, which is a company that offers both wireline and wireless

services to low-income consumers and which obtained a majority of its state ETC designations at the time it operated only in the wireline segment.

44. TracFone's advocacy rests on a mistaken assumption that USF rules are bifurcated for two distinct supported services – a "wireless supported service" and "wireline supported service." As a plain reading of the rules shows, however, *there is no such distinction in the rules*: the program supports "services or functionalities," such as voice grade access to public switched network, local usage, dual tone multi-frequency signaling or its functional equivalent, single-party service or its functional equivalent, access to emergency services, access to operator services, access to interexchange service, access to directory assistance, and toll limitation for qualifying low-income consumers. [52] None of these services is a "wireless only" or "wireline only" service. As an example, both wireless and wireline products are capable of providing the first supported service – voice grade access to public switched network because the term "voice grade" simply refers to the speed/bandwidth necessary to carry human voice, and the term "public switched network" is a reference to the network available to both wireless and wireline carriers. The wireless and wireline technologies in themselves have no bearing on the nature of the supported service, but rather are no more than the underlying network technologies. In fact, the description of two of the supported services – "single-party service" and "access to interexchange carrier" specifically addresses two ways (wireline or wireless) in which the specific services can be provided, *invalidating TracFone's artificial bifurcation*. This language is as follows:

> "Single-party service" is telecommunications service that permits users to have exclusive use of a wireline subscriber loop or access line for each call placed, or, in the case of wireless telecommunications carriers, which use spectrum shared among users to provide service, a dedicated message path for the length of a user's particular transmission

[52] See 47 CFR §54.101.

> "Access to interexchange service" is defined as the use of the loop, as well as that portion of the switch that is paid for by the end user, or the functional equivalent of these network elements in the case of a wireless carrier, necessary to access an interexchange carrier's network.

In addition, the fact that the supported services are formulated very generally as "services or their functional element" is a further indication that *the spirit of the rules was to make them technology-neutral*.

45. Just like nothing in the rules bifurcates supported services into "supported wireless" and "supported wireline" service, there is nothing in the rules that bifurcates ETCs into "ETCs for wireless service" and "ETCs for wireline service." In fact, the rules regarding the ETC designation (47 CFR §§ 54.201 – 54.209) are written generally as applying simply to "common carriers" (rather than wireline and wireless carriers), and spell out the opposite – *that the underlying technology used by an ETC does not matter*. This language is as follows:

> 47 CFR § 54.201 (h) A state commission shall designate a common carrier that meets the requirements of this section as an eligible telecommunications carrier *irrespective* of the technology used by such carrier. (Emphasis added.)

46. In other words, there is only one set of rules for ETC designation, and there is only one type of ETC designation, rather than two separate designations of "wireless-only ETC" or "wireline-only ETC" as advocated by TracFone. The economic rationale behind this point was explained in the Commission's 1997 Universal Service Order[53] as follows (footnotes omitted):

> 364. …In this Order, we endorse the Joint Board's recommendation that we adopt the principle of "competitive neutrality" and conclude that universal service support mechanisms and rules should not unfairly advantage one provider, nor favor one technology. Consistent with this principle, we agree with the Joint Board that the funding mechanisms for Lifeline should be made more competitively neutral…

53 *In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45,* Report and Order released on May 8, 1997 ("1997 Universal Service Order").

47. The Order also contains the following language describing the referenced reasoning of the Joint Board (footnote omitted):

> 45. In the Recommended Decision, the Joint Board recommended that the Commission's universal service policy "be a fair and reasonable balance" of all of the principles identified in section 254(b) and the additional principle of "competitive neutrality." The Joint Board also recommended that the principle of competitive neutrality include the concept of technological neutrality "by allowing the marketplace to direct the development and growth of technology and avoiding endorsement of potentially obsolete services." . . .
>
> 49. We concur in the Joint Board's recommendation that the principle of competitive neutrality in this context should include technological neutrality. Technological neutrality will allow the marketplace to direct the advancement of technology and all citizens to benefit from such development. By following the principle of technological neutrality, we will avoid limiting providers of universal service to modes of delivering that service that are obsolete or not cost effective. The Joint Board correctly recognized that the concept of technological neutrality does not guarantee the success of any technology supported through universal service support mechanisms, but merely provides that universal service support should not be biased toward any particular technologies. We anticipate that a policy of technological neutrality will foster the development of competition and benefit certain providers, including wireless, cable, and small businesses, that may have been excluded from participation in universal service mechanisms if we had interpreted universal service eligibility criteria so as to favor particular technologies. . . .

48. To summarize, the Commission's reasoning was that the principle of technology neutrality would ensure that no entity receives an unfair competitive advantage, and obsolete or non-cost-effective technologies are not artificially encouraged. Hence, under the principle of technology neutrality competition is not inhibited, and universal service goals are reached in the most economically efficient way.

49. The current trend in the telecommunications industry continues to be a general convergence of markets and technologies. As mentioned before, while wireline and wireless technologies are at times complementary services, a growing number of consumers are substituting their wireline telephone service with wireless service, increasingly viewing the two as substitutes. As both network and consumer technologies advance, wireless service is no

longer used for just voice offerings, but also for e-mail, web browsing and text messaging. Furthermore, wireline companies use fixed wireless technologies as a least-cost method of reaching wireline customers in areas where construction of outside plant facilities is relatively more expensive.[54] Not coincidentally, the largest wireless companies in the country (AT&T Mobility and Verizon Wireless) are affiliated with the largest wireline ILECs in the country (AT&T and Verizon), which in turn have merged with the largest long-distance carriers in the country (AT&T and MCI). These vertically and horizontally integrated firms are now offering video services, while cable video companies provide voice telephony and broadband data services. Industry mergers and expansions into adjacent product markets (such as a video offering by a wireline company) suggest that there exist network as well as marketing synergies in operating in more than one segment. The TracFone Petition is going against these industry trends by proposing to create artificial and unjustifiable delineations among USF supported services.

50. TracFone's proposal to introduce a "wireless-only ETC" designation would also create additional bureaucratic hurdles for carriers that operate in both wireline and wireless segments of the market (and which service the common pool of population providing the *same* USF-supported services) and a waste regulatory resources. TracFone's proposal would create additional barriers to entry into the ETC market and harm the interest of consumers, especially low-income consumers that would end up with fewer carrier choices and higher prices.

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[54] For example, a New Mexico rural LEC and ETC Sacred Wind Communications is using fixed wireless technology to expand its reach to previously unserved areas of Tribal lands (New Mexico Public Regulation Commission, *In The Matter Of The Application Of Sacred Wind Communications, Inc. For Approval Of Initial Rates, Terms And Conditions Of Service And For Support From The New Mexico Rural Universal Service Fund And Petition For Variance From Commission Rules*, Case No. 10-00315-UT, Direct Testimony of John W. Badal, October 7, 2010, pp. 11-14.

51. TracFone's Petition, in this regard, also seems disingenuous. TracFone is presenting its proposal to introduce a special "wireless ETC" designation – a proposal that seems at odds both with technology and industry developments and with longstanding FCC rulings – as a request for "clarification" of the existing rules. For example, on page 12 the Petition states "TracFone asks this Commission to issue an order clarifying that a carrier designated as an ETC by a state commission for purposes of offering wireline services may not rely on that designation to expand its service to include wireless services in a state where the state commission lacks jurisdiction to designate a wireless carrier as an ETC." Even if there were some policy or economic justification for TracFone's proposal, this would not be a mere "clarification" of existing rules. Moreover, TracFone's other regulatory filings show that even TracFone does not seriously believe that current rules require technology-based ETC designation. Specifically, in the above mentioned *Broadband Lifeline Link Up Petition*, where TracFone proposed a "trial broadband Link Up and Lifeline" program, TracFone stated as follows (emphasis added):

> ETCs electing to participate in the Broadband Lifeline/Link Up program may do so by notifying the Commission of their intent to participate. *Since those entities already have been designated as ETCs either by the Commission or by state commissions, there would be no need to apply for additional designation or for expanded ETC authority*.[55]

D. Part III: Facilities Based Services

52. On pages 12 through 18, the TracFone Petition addresses the "facilities-based" requirement as a condition of receiving USF support. The first five pages of TracFone's argument (pp. 12 through 16) appear to be simply an advocacy in support of the existing practice, such as the observation that to qualify for support, a carrier may offer services by using its own facilities or a combination of facilities, that unbundled network elements count toward

[55] TracFone Texas Petition, p. 1.

the definition of "facilities," and that the ETC designation is given to a carrier for a specific state. The TracFone Petition gets to its main point on page 18, where it suggests that the "facilities-based" requirement means that if a company already holds an ETC designation in a particular state (for which it qualified while offering wireline-based services), the same company would have to receive a *second ETC* designation before it can receive support for wireless services. This proposal relies on TracFone's other proposition – the proposition that there should be bifurcated ETC designations (a "wireless-only ETC" and a "wireline-only ETC"), discussed previously.

53. As demonstrated, TracFone's proposal for separate ETC designations is in direct contradiction with the principle that USF should be technology-neutral. Because the USF rules do not delineate supported services by technology, TracFone's proposition that a carrier's wireline facilities are not sufficient for the carrier to qualify for USF support associated with its wireless-based offerings is similarly misguided. The rules say generally that an ETC shall offer the supported services by using its facilities or a combination of facilities without specifying the technology: i.e., it is technology neutral. The exact text of the relevant rule is as follows:

> 47 CFR § 54.201(d). A common carrier designated as an eligible telecommunications carrier… shall, throughout the service area for which the designation is received: (1) Offer the services that are supported by federal universal service support mechanisms under subpart B of this part and section 254(c) of the Act, either using its own facilities or a combination of its own facilities and resale of another carrier's service.

54. Nothing in the rules says that the facilities should include both wireless and wireline facilities. On the contrary, as already discussed, sub-item (h) of the same rule[56] says that the ETC designation should be "irrespective of the technology used by such carrier." The TracFone Petition is reading into the rules a technology-based distinction that is simply not there and that

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56 47 CFR § 54.201(h).

by creating artificial delineations between technologies would only increase the cost of achieving universal service goals. The 1997 Universal Service Order explained that the Commission intentionally declined to specify the level of facilities required to accommodate different entry strategies by new entrants. The specific language of the Order is as follows (emphasis added):

> 169. Level of Facilities Required to Satisfy the Facilities Requirement… we find that the statute does not require a carrier to use its own facilities to provide each of the designated services but, instead, permits a carrier to use its own facilities to provide at least one of the supported services… by declining to specify the level of facilities required, we believe that Congress *sought to accommodate the various entry strategies of common carriers seeking to compete* in high cost areas. We conclude, therefore, that, if a carrier uses its own facilities to provide at least one of the designated services, and the carrier otherwise meets the definition of "facilities" adopted above, then the facilities requirement of section 214(e) is satisfied. For example, we conclude that a carrier could satisfy the facilities requirement by using its own facilities to provide access to operator services, while providing the remaining services designated for support through resale.

The reasoning behind the above citation is explained in detail in the Local Competition Order,[57] in which the Commission recognized that there are multiple entry strategies for competitive entry into telecommunications markets, and that because of the significant capital requirements, entry is likely to be a blend of entry modes, with a progression from pure resale to building some facilities and then to expanding a carrier's own facilities. See, for example the following language in the Local Competition Order:

> 12…. We anticipate that some new entrants will follow multiple paths of entry as market conditions and access to capital permit. Some may enter by relying at first entirely on resale of the incumbent's services and then gradually deploying their own facilities. This strategy was employed successfully by MCI and Sprint in the interexchange market during the 1970's and 1980's. Others may use a combination of entry strategies simultaneously -- whether in the same geographic market or in different ones. Some competitors may use unbundled network elements in combination with their own facilities to serve densely populated sections of an incumbent LEC's service territory, while using resold services to reach customers in less densely populated areas. Still other

[57] *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996;Interconnection Between Local Exchange Carriers and Commercial Mobile Radio n Service Providers,* CC Docket Nos. 96-98, 95-185, First Report and Order ("Local Competition Order").

> new entrants may pursue a single entry strategy that does not vary by geographic region or over time. Section 251 neither explicitly nor implicitly expresses a preference for one particular entry strategy. Moreover, given the likelihood that entrants will combine or alter entry strategies over time, an attempt to indicate such a preference in our section 251 rules may have unintended and undesirable results.

55. Just as the above citation suggests that resale may be the most cost-effective way for a new competitor to reach customers in less densely populated areas even as the competitor obtains UNEs or builds its own network in more densely populated areas, a resale strategy may be the most suitable way to initially reach other segments of the market as well. For example, providers that focus on low-income segments of the population typically offer at least a portion of their offerings (including wireless offerings) by using resale, rather than by building out entirely new networks focused on low-income areas. Whether and when to construct a new network or other supported facilities can then be assessed based on market penetration, the apparent stability of the market, and other factors. This approach thus harmonizes the multiple entry strategies the FCC recognizes to exist for CLECs in general – which can include very substantial reliance on resale, particularly in the early years of market entry – with the concept in Section 214(e)(1) of the Telecommunications Act, expanded upon by the FCC in the order quoted above, that an ETC may rely in substantial part on reselling other carriers' services, as long as it uses its own facilities to provide at least one of the various separately identified supported services.

56. Indeed, this is what appears to be occurring. As discussed above, the recent increase in the penetration rates associated with the Low Income program is largely due to ETCs that rely in whole or in part on the resale of other carriers' wireless services, rather than on ETCs that build out their own entirely new networks. This is particularly important because the big facilities-based wireless providers tend to downplay this segment of the market.[58] While for companies

58 See for example, *In the Matter of Federal-State Joint Board on Universal Service; Lifeline and Link Up* CC Docket No. 96-45, WC Docket No. 03-109 Comments Of Advocates For Basic Legal Equality, Inc.,

like Nexus and TracFone, low-income people constitute the lion's share of their business, low-income consumers represent a minority of the total population. Therefore, the construction of wireless facilities just to serve this segment of the total population is almost certainly economically unjustified for companies such as Nexus and TracFone (particularly since they cannot reasonably anticipate great success in acquiring market share from incumbent wireless carriers, such as AT&T Mobile and Verizon Wireless). As a result, just as a CLEC entering a new market may start with few of its own facilities and only expand as is justified by its success in the marketplace, so too will an ETC enter new markets with few facilities initially, with additional facilities being deployed over time as market and competitive conditions warrant. Permitting ETCs this flexibility to respond to changing market and technological conditions is good policy, (a policy captured in Section 214(e)(1) of the Telecommunications Act) which is consistent with the Commission's general policies regarding entry by CLECs into previously monopolized markets and market segments.

57. Further, a company that serves low-income consumers via both wireline and wireless technologies may be superior to a single-technology ETC in terms of operational efficiencies. Such a company may also be superior because it is capable of offering consumers a wider range of services. In sum, reliance on a combination of a carrier's own and resold facilities, as well as a combination of wireline and wireless facilities results in a cost-effective and consumer-oriented

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Community Voice Mail National Crossroads, Urban Center Disability Rights Advocates, The Low Income Utility Advocacy Project, Minnesota Legal Services Advocacy Project, The National Consumer Law Center, On Behalf Of Our Low-Income Clients, New Jersey Shares, Ohio Poverty Law Center, Pro Seniors Salt Lake Community Action Program, Texas Legal Services Center ,The Utility Reform Network, Twin Cities Community Voicemail ("Consumer Groups") In Response To The Federal-State Joint Board Request For Comment dated July 15, 2010 at p. 31: "AT&T, for example, makes no mention of Lifeline or discounted home phone service on their home page. It is only after clicking through a minimum of three pages (if you chose the "right" links) do you come to a very bland and vague paragraph… Verizon's website requires even more "clicks" and has buried vague references to Lifeline in the "Support" link of their website." Footnote p. 77 on the same page adds that "[e]ven Tracfone prepaid wireless, a company with significant business plans to offer Lifeline telephone service, makes no mention of the service on their website. Customers would have to know to search for the company's specific product name, Safelink, in order to find information about Lifeline."

set of services that is likely to be superior to pure resale, pure facilities, pure wireless, or other narrower entry strategies.

58. Another reason why it makes no economic sense to require, as a condition of Low Income funding, a separate showing of wireless facilities for an ETC is that has already received the ETC designation based on the presence of wireline facilities is that wireless resale arrangements do not contain the same "dangers" of duplicative support as do wireline resale arrangements. Specifically, wireline resale arrangements are "total service resale" arrangements, in which the reseller has the ability to request low income discounts from the wholesale provider. In contrast, it is our understanding that in a wireless resale arrangement the reseller has no ability to request a low income discount from the wholesale provider, and as a result, there is no danger that both the wholesale provider and reseller would claim the same low-income subscriber. On a more general note, while the "facilities" requirement is a necessary safeguard against receiving duplicative support under the High-Cost support mechanism, there is no similarly strong economic rationale for requiring the "facilities" requirement as a condition of receiving Low Income support: The High-Cost mechanism is designed to compensate the cost incurred by the underlying provider (the facilities-based provider), and therefore, the subsidy flow should go to the entity that incurs the cost (the underlying facilities-based provider or a CLEC that purchases the relevant network element from the underlying facilities-based provider at economic cost). The low income mechanism is designed to compensate the low-income end user, so the subsidy goes to the end user, while the provider (whether the underlying facilities-based provider or a reseller) simply flows through the subsidy from the fund to the low-income end user.

59. Lastly, TracFone's proposal would impose significant cost on state regulatory bodies, as well as the FCC, because these commissions would henceforth be required to conduct two

separate ETC designations proceedings for carriers providing the same supported services using both wireline and wireless technologies. And yet, the analysis would be exactly the same in each proceeding: whether the ETC will provide the nine supported services over its own facilities, at least in part, as well as advertise the services.

IV. CONCLUSION

In this Declaration, we have reviewed issued raised in the TracFone Petition and demonstrated that its concerns and recommendations are misguided. Further, we have demonstrated that TracFone’s recommendations run contrary to the Commission’s longstanding universal service objectives, which, for the Low Income program, is to make telecommunications and information services accessible to low-income consumers. Specifically, TracFone’s policy recommendations would erect unnecessary barriers-to-entry and generally increase the cost of doing business for prepaid carriers, harming rather than helping low-income consumers.

CERTIFICATE OF SERVICE

I, Christopher W. Savage, hereby certify that on this 30th day of December 2010, I caused a copy of the foregoing Corrected Declaration of August H. Ankum, Ph.D. And Olesya Denney, Ph.D. in WC Docket Nos. 09-197, 03-109 to be sent via electronic mail to:

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